

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

UNITED STATES OF AMERICA :
 :
 vs. :
 :
 DYLANN STORM ROOF : 2:15 - CR - 472

Telephone conference in the above matter held on
Tuesday, October 25, 2016, commencing at 11:30 a.m., before
Hon. Richard M. Gergel, in camera, in the United States
Courthouse, 83 Meeting St., Charleston, South Carolina,
29401.

APPEARED VIA TELEPHONE ON BEHALF OF THE UNITED STATES:

JAY N. RICHARDSON, ESQ., 1441 Main St., Columbia, SC.
NATHAN WILLIAMS, ESQ., P.O. Box 978, Charleston, SC.
STEPHEN CURRAN, ESQ. and MARY J. HAHN, ESQ.,
601 D St. NW, Washington, DC.

APPEARED VIA TELEPHONE ON BEHALF OF THE DEFENSE:

DAVID I. BRUCK, ESQ., Washington & Lee School of Law,
Lexington, VA.
KIMBERLY C. STEVENS, ESQ., 1070-1 Tunnel Rd.,
Asheville, NC.
SARA S. GANNETT, ESQ., 850 W. Adams St., Phoenix, AZ.

REPORTED BY DEBRA L. POTOCKI, RMR, RDR, CRR
Official Court Reporter for the U.S. District Court
P.O. Box 835
Charleston, SC 29402
843/723-2208

11:31:44AM 1 THE COURT: For the record, this is the matter of
2 United States versus Roof, 2:15-472.

11:31:52AM 3 Could counsel identify themselves for the record,
4 beginning with the Government counsel.

11:31:58AM 5 MR. RICHARDSON: Yes. This is Jay Richardson, Your
6 Honor. I've got Nathan Williams, Steve Curran, Mary Hahn, and
7 hopefully in just a moment, Rich Burns, also on the phone.

11:32:07AM 8 THE COURT: For the defense?

11:32:10AM 9 MR. BRUCK: David Bruck for the defense; I have Kim
10 Stevens in the room with me.

11:32:15AM11 MS. GANNETT: Your Honor, this is Sarah Gannett; I'm
12 also on the phone.

11:32:17AM13 THE COURT: Good. Have all counsel received the
14 letter from Dr. Dietz dated today, regarding his experience
15 this morning at the jail?

11:32:32AM16 MR. RICHARDSON: Yes, Your Honor.

11:32:33AM17 THE COURT: Mr. Bruck?

11:32:34AM18 MR. BRUCK: Yes, sir, we have.

11:32:35AM19 THE COURT: Okay. For the record, that is document
20 No. 503, which we have filed under seal. I would like the
21 parties' response to what they would recommend the Government
22 do with this development.

11:32:52AM23 Government first.

11:32:55AM24 MR. RICHARDSON: Your Honor, the Government's
25 position is sort of twofold. First, we believe the Court's

1 order ought to govern, that the defendant in this case doesn't
2 get to dictate or control the process under which he is
3 examined. And so we think that's a sort of unfortunate choice
4 that he's made, but it's a choice that he has made to refuse
5 to cooperate and ignore the Court's order.

11:33:20AM 6 Secondarily, if the Court does consider acceding to the
7 defendant's demands, then the Government needs to have an
8 opportunity to speak with Dr. Dietz about, you know, the
9 conditions the Court is considering changing or imposing upon
10 him, to determine whether those conditions would, and what
11 degree, would limit the effectiveness of any exam that's
12 given.

11:33:51AM 13 Obviously we have not spoken with Dr. Dietz, you know,
14 since this morning. Since last night. So in that regard
15 we're at a little bit of a disadvantage here.

11:34:02AM 16 THE COURT: Mr. Bruck.

11:34:04AM 17 MR. BRUCK: Yes, sir. Well, I think the Court should
18 know that, as the Court will recall, we originally requested
19 recording, we originally requested a videotape for the
20 defendant's protection. On reflection, we changed that
21 request to an audio and opposed a videotape; of course, the
22 Court ruled that the video should be taken.

11:34:30AM 23 I have to say that we are not completely surprised. We
24 had hoped that the defendant would accede to the procedure,
25 and thought there was some reason that he might, because he

1 tends to be compliant in the face of authority, despite some
2 confounding psychological factors.

11:34:54AM 3 You should know that we have conducted our mental health
4 evaluation in the booth, because the defendant does not
5 tolerate contact visits, for reasons we believe have to do
6 with his neurodevelopmental and psychiatric deficits.

11:35:19AM 7 He has long expressed to us, and I informed the Government
8 of this when I met with the death penalty committee in
9 Washington on February 1st, that he believes that his face is
10 deformed, that his forehead is malshaped, is misshapen. And
11 he has a -- what seems to us to be a pathological fear of
12 people seeing his face. He devotes great attention to
13 controlling any photographs that are taken of his face. And
14 that photographs that he took himself, he selected out of
15 hundreds of photos that he took. The famous bowl haircut has
16 to do with his covering his forehead so that people can't see
17 what his forehead looks like.

11:36:14AM 18 The Court should also be aware that when our
19 neuropsychologist attempted to use a photographic device to
20 map his face, the defendant refused to allow that to be done,
21 even when it was explained to him that it wasn't going to
22 actually produce photographs, but merely a computer mapping
23 system, it was still intolerable for his face to be
24 photographed.

11:36:45AM 25 So under all those circumstances, I think what we are

1 dealing with is not willful noncompliance, but actual
2 symptomatology of a mental disorder.

11:36:58AM 3 THE COURT: Mr. Bruck, did the defendant complete his
4 evaluation for the defense expert in the noncontact visiting
5 booth?

11:37:08AM 6 MR. BRUCK: Yes. I should say that he has been seen,
7 to a limited extent, for physical exams, in a contact setting.
8 But he has increasingly made clear that this was intolerable,
9 and that he wasn't going to cooperate with us, to the extent
10 that our experts wanted to see him in a contact setting. And
11 at least since the late spring, I don't believe we have had
12 any contact visitation, although all of our experts would have
13 much preferred to conduct their evaluations in a contact
14 setting, but that simply has not been possible.

11:37:48AM15 So I tell the Court this, and the Government, both to
16 explain that I think what we are running into is not defiance,
17 but actually the subject matter that, you know, that merits
18 the pretrial mental health evaluation. And also to
19 demonstrate that what we have here is not willful disobedience
20 to the Court's order, but a real lack of capacity to tolerate
21 the stress that comes with the conditions that have been set
22 by the Court.

11:38:22AM23 THE COURT: Let me ask you this. The original
24 discussion regarding the taping, whether video or audio taping
25 of this, was made at the defense request. Do you now, in

1 light of your client's objections to audio or videotaping,
2 withdraw that request?

11:38:39AM 3 MR. BRUCK: We do.

11:38:41AM 4 THE COURT: Okay. Now, I want the Government to know
5 that I have, you know, obviously had dozens of people
6 evaluated, in which I have returned to me a written report. I
7 don't see a videotape or anything like that. Recognizing the
8 prize here is, the purpose here, is to obtain the psychiatric
9 evaluation, does the Government seriously object to not audio
10 and videotaping this if, in fact, it produces the desired
11 psychiatric evaluation?

11:39:21AM12 MR. RICHARDSON: I think it's difficult for us to
13 answer that question without speaking with Dr. Dietz. I am --

11:39:28AM14 THE COURT: Let me say this. I am a little squirrely
15 about you guys, now that he's had contact with Roof, having
16 y'all communicate with him. He has provided me his phone
17 number, and I am intending to call him to ask him that very
18 question, which is, can he conduct a valid evaluation in a
19 noncontact booth. I intend to ask him that question before I
20 rule.

11:39:54AM21 And so other than that, if he responds that he can -- he
22 believes he can conduct a valid evaluation, does the
23 Government object to proceeding without audio or video
24 recording?

11:40:11AM25 MR. RICHARDSON: No, as long as he is able to conduct

1 the tests that he has indicated are necessary, as well as the
2 clinical evaluation. And I think it is also important to
3 advise him of what a noncontact booth is in this context,
4 which I understand, you know, to require the use of a
5 hand-held phone to communicate.

11:40:38AM 6 THE COURT: Yeah, he seems to know what it is; he
7 writes me a letter about it. I have the impression that
8 Dr. Dietz, this is not his first time inside of a secure
9 facility.

11:40:52AM 10 MR. RICHARDSON: We ultimately defer to Dr. Dietz, I
11 mean, his ability to conduct a meaningful and effective
12 evaluation is obviously something I'm not going to second
13 guess.

11:41:03AM 14 THE COURT: Okay. Anything further from either
15 counsel want to -- because my plan is to adjourn this hearing,
16 telephone hearing, and I intend to communicate with Dr. Dietz
17 on the record, court to expert, I'm going to ask him these
18 questions, and then I intend to rule.

11:41:28AM 19 MR. BRUCK: I think I should just mention one thing
20 to clarify, the professional contact booths do not involve a
21 hand-held phone. They do involve speaking through a small
22 sort of opening, voice opening, with no electrical
23 intermediary between the people on either side.

11:41:53AM 24 I will say that Dr. Dietz may well start, and then
25 complain that it is not an optimal setting. It has not been

1 an optimal setting for us. This is how we have to meet with
2 our clients, counsel. It has not been an optimal setting for
3 our experts, and it will not be an optimal setting for
4 Dr. Dietz, and I regret that. But that's the set-up at the
5 jail, and that's the best they can do for noncontact
6 visitation. And I just wanted the Court to be aware of what
7 it's like.

11:42:23AM 8 THE COURT: Okay. Let me communicate with Dr. Dietz.
9 And I may actually ask him to go look at this non -- see if we
10 can arrange for him to evaluate that or let me know if there's
11 a problem.

11:42:41AM 12 But remember here, folks, our goal is to give the jury the
13 very best information to make a just and fair and right
14 decision, and that is not accomplished by, A, withholding all
15 mental health evidence, and B, by trying to have one side --
16 I'm not going to allow one side, under the rules, we would
17 result in having no evidence. So we obviously might want to
18 accommodate a bit -- the word was accede, as if giving up -- I
19 don't view that that way, I view it as a way of giving my jury
20 the very best information to make a decision.

11:43:26AM 21 So with that, let me adjourn this hearing, and I will
22 communicate with Dr. Dietz.

11:43:31AM 23 Thank you very much. Hearing is adjourned.

11:43:33AM 24

11:43:33AM 25 (Hearing adjourned at 11:43 a.m.)

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REPORTER'S CERTIFICATION

I, Debra L. Potocki, RMR, RDR, CRR, Official Court
Reporter for the United States District Court for the District
of South Carolina, hereby certify that the foregoing is a true
and correct transcript of the stenographically recorded above
proceedings.

S/Debra L. Potocki

Debra L. Potocki, RMR, RDR, CRR